HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO.707 OF 2006

Between:

A.Samba Murthy

. . .Appellant

AND

State of Andhra Pradesh
and others

. . .Respondents

Counsel for the appellant : Shri S.Chandra Sekhar

Counsel for the respondent Nos.1 to 4 : Government Pleader for Revenue

Counsel for the respondent No.5 : Government Pleader for School Education

Counsel for the respondent No.6 :
None

Dated: 3rd July, 2006

: JUDGMENT :

PER G.S.SINGHVI, CJ

Having failed to persuade the learned Single Judge to nullify the action taken by respondent Nos.1 to 5 to take possession of Plot No.22 measuring 89 square yards situated in Survey No.237/1 and 2 and 3 of Madannapet Village, Saidabad Mandal, Hyderabad District and to issue a mandamus to them to restore possession of the said land to him, the appellant has preferred this appeal under Clause 15 of the Letters Patent.

The appellant retired from government service as Joint Director of Agriculture. He claims to be a member of Telangana Agricultural Officers Cooperative Housing Society Limited (respondent No.6 herein). He is said to have purchased open plot bearing No.22 measuring 89 square yards from respondent No.6 by sale-deed dated 20-8-1993 which was got registered on
20-11-1993. He filed Writ Petition No.3422 of 2006 for issue of a mandamus to redeliver possession of the plot by asserting that the official respondents have taken possession thereof on the pretext that the same is part of surplus land of K.Krishna Reddy and his brothers and District Collector, Hyderabad allotted the same to Education Department for constructing the buildings of Government Primary/High Schools. In the affidavit filed by him, the appellant averred that on coming to know of this development in 2004, he represented to the department for supply of relevant documents, but his request was turned down by the Mandal Revenue Officer, vide letter dated 20-12-

2005.

The writ petition filed by the appellant was dismissed by the learned Single Judge with the observation that possession of the land had been taken prior to April, 2004 and the remedy, if any, available to the petitioner was to file suit for recovery of possession.

Sri Chandrasekhar, learned counsel for the appellant argued that even though land purchased by respondent No.6 from Krishna Reddy and his brothers may be a part of their surplus land, the official respondents could not have taken possession of the land purchased by his client without following due process of law. Learned counsel emphasized that the appellant had purchased the land from respondent No.6 under a bona fide belief that the land is free from all encumbrances and, therefore, he cannot be deprived of his property without paying compensation. Learned counsel then argued that even if the allotment made in favour of the appellant is found to be tainted by some infirmity, the court may direct the State Government to regularize the same because in similar cases allotments have already been regularized.

Learned Government Pleader for Revenue submitted that the land purchased by respondent No.6 from Krishna Reddy and his brothers through registered sale-deeds executed from 1986 to 1988 had been declared surplus as early as in the year 1984 and, therefore, all transactions of sale and purchase should be treated as nullity and no right, much less any vested right, can be said to have accrued in favour of the appellant on the basis of transfer made by respondent No.6. He further argued that without successfully challenging the order passed by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 (for short 'the Act') in respect of the surplus land of Krishna Reddy and his brothers, the appellant cannot seek a direction for redelivery of possession.

We have given serious thought to the entire matter. Before

dealing with the argument of the learned counsel for the parties, we consider it proper to mention that after taking cognizance of the appellant's grievance regarding non-supply of the copies of documents by the Mandal Revenue Officer, the Court had passed order dated 26-6-2006 and directed the learned Government Pleader to ensure that copies of the relevant documents are made available to the counsel for the appellant and, in compliance of that order, the copies of the documents were made available to the learned counsel on 29-6-2006.

Reverting to the case in hand, we find that the appellant has not controverted the fact that the land purchased by respondent No.6 was part of the surplus area of the vendors, namely, Krishna Reddy and his brothers, which vested in the State Government in 1984 by virtue of the operation of Sections 8 and 10 of the Act. It is, thus, clear that transaction involving purchase of land by respondent No.6 from Krishna Reddy and his brothers was nullity and the appellant who purchased land from respondent No.6 did not acquire any right over it. As a corollary, we hold that the appellant cannot seek a direction for re-delivery of possession of the plot, which, as mentioned above, constitutes part of the surplus area and vests in the State Government.

The argument of Sri Chandrasekhar that the action of the official respondents not to recognize the purchase made by the appellant should be declared as discriminatory cannot be entertained because, in the affidavit filed by him in support of the writ petition, the appellant did not lay the factual foundation for this plea. He has neither averred that plot allotted to other members of respondent No.6 have been regularized by the State Government nor any document had been produced in support of such assertion. Therefore, we cannot allow the petitioner to raise new plea, the determination of which requires

investigation into issues of fact.

We are further of the view that alleged regularization of allotment of plots in favour of the members of respondent No.6 cannot be made a ground for invoking the doctrine of equality because it is well settled that an illegal action taken or an illegal order passed by a public authority cannot be made basis for applying the doctrine of equality enshrined in Article 14 of the Constitution of India.

Before concluding, we may mention that Krishna Reddy and his brothers appear to have sold land to respondent No.6 without disclosing the fact that the same was surplus. In its turn, respondent No.6 allotted plots to its members including appellant without disclosing that the land sought to be divided into plots forms part of surplus area of Krishna Reddy and his brothers. However, fraudulent act done by Krishna Reddy and his brothers qua respondent No.6 cannot be made a ground for directing the official respondents to restore possession of the land to the appellant.

In the result, the appeal is dismissed. Needless to say that the appellants shall be entitled to avail remedy by filing civil suit.

G.S.SINGHVI, CJ

G.V.SEETHAPATHY, J

Date: 03.07.2006

kvni/svs